

# Constitution Reposition of the 1945 Constitution in Justice Collaborators on The Corruption Delik Based on Legal and Ham Satisfaction

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**Abstract.** This scientific journal discusses the arrangements for implementing and granting witness status in cooperation or known as the Justice Collaborator, which invites pro and cons issues about their usefulness and consequently can be used as legal commodities, as well as subjectivity in providing their determination. To answer the question that became public unrest, a comprehensive interpretation of the Law is needed both grammatically, historically and juridically so that an understanding of whether the legal politics in the LPSK Law governing Justice Collaborator is in accordance with the objectives in terms of revealing the main actors and recovering losses countries related to the economy and development. Furthermore, t1 investigate why the status Acts of corruption were established by the Justice Collaborator in criminal proceedings does not immediately realize a social justice as in paragraph IV of the Preamble of the Republic of Indonesia Constitution 1945. It is very possible that the existing norms are incomplete, so they must be reconstructed by accommodating the principle of expediency and justice while maintaining a progressive nature of law enforcement in order to create ideal norms.

**Keywords:** Justice Collaborator; UUD RI 1945; Human Rights (HAM)

## 1 Introduction

Problems in the field of law enforcement faced by the Republic of Indonesia can result in various sectors, including development and economic problems, which are caused by Corruption, Trafficking in Persons, Illegal Mining, Narcotics trafficking and various types of crimes that cause massive losses.

Law enforcement efforts that occur both at the stage of the process in the Investigation and up to the process in the Court today are experiencing a decline in public trust. The phenomenon of The Justice Collaborator system is expected to help law enforcement detect criminal activity. larger perpetrators or main actors of crime and be able to recover state losses. One indicator of the growing case of corruption is indicated by the large number of Operation Catch Hands in various regions and the Defendant submitted to the Court. This shows that corruption shows a wide scale. Even the consequences caused by Corruption has infiltrated the morality of standards as well as the legal process.

Positive legal remedies to deal with the problem of special crimes have been made so far through a number of changes in the legislation. The difficulty factor in The difficulty of law

enforcement in eliminating criminal acts of corruption resides in the difficulty of eradicating criminal acts of corruption in revealing witness statements to prove corruption crimes in court.

The Criminal Procedure Code regulates the foundation of the Presumption of Innocence which upholds the dignity and dignity of a person and is stated and must be treated as an innocent person, even if his status as a Suspect or Defendant, this does not support the case verification. Therefore professionalism, humanism, skills and credibility of law enforcement must take precedence. In law enforcement, dealing with the issues of professionalism and the need to safeguard human rights, particularly in the evidence process, it is necessary to innovate from the general evidentiary law by including new provisions and patterns specifically for the purpose of recovering state losses due to criminal acts, as a form of Corruption Eradication.

According to Satjipo Raharjo, in terms of eradicating crimes classified as extraordinary crimes such as corruption, extraordinary handling is also needed, of course there are several kinds of methods and methods that are appropriate, including by trapping the perpetrators into the scope of criminal law, with serious crimes / criminalizing the perpetrators of corruption. One of the revolutionary steps is to involve justice collaborator. The term Justice Collaborator is actually a new term in Indonesia, before in Indonesia there was the term crown witness, that is, the perpetrators who were also witnesses to uncover other actors with awards or rewards to reduce the threat of punishment.

The term Justice Collaborator has been described in the Treatment of whistleblower reporters Supreme Court Circular No. 4 of 2011: Witnesses of criminals who took part in certain illegal acts (Justice Collaborators). Recognize that he was not the primary offender of the crime and that he is willing to testify as a witness in court.

Justice collaborator itself is used in the evidentiary process in certain criminal acts where the file has been carried out splits, splitting the justice collaborator by the public prosecutor, because it is difficult to obtain evidence to be submitted in the proof process. Justice collaborator has been used in organized crime, such as corruption which is usually a crime that is committed together and the perpetrators are more than one person.

In Indonesia, there is still no specific regulation regarding the forms of protection for witnesses who have cooperated in uncovering a criminal act. If the implementation of determining the status of collaborator in disclosing the crime is carried out properly, it will have a very significant usefulness in uncovering the brains of larger perpetrators so that law enforcement does not stop with the actors who play a role in the form of assistance or are not actually the actors who play a large role such as corruption.

Besides that, legal protection for justice collaborator is very much needed so that someone who acts as a justice collaborator is able to provide significant information so that a crime can be properly disclosed because it has been supported by the protection that has been given. The Justice Collaborator is entitled to obtain legal relief or sentence remission in accordance with the Whistleblowers, Reporting Witnesses, and Justice Collaborators are treated differently in some criminal activities, Circular No. 04 of the Supreme Court of the United States was issued in 2011. information which is confidential in nature with a sense of security, so that the process of investigation, prosecution and trial of corruption can be carried out properly.

However, it is not uncommon in reality that there is still no legal certainty that the rights of someone who acts as a Justice Collaborator even do not get relief, but they are still punished as severely as other perpetrators. The Protection of Witnesses and Victims Act was passed in 2014. (Law 31 of 2014) was passed. order to provide protection and foster community participation to uncover / report criminal acts, such reporters must be given adequate legal and security protection equal to the weight of the case being reported. So that fostering a sense of volunteerism is not the other way around, feeling threatened or intimidated by the process of

law enforcement, which is ideally not justified by ignoring human rights that are protected by the state constitution.

The provisions on the rights of the Justice Collaborator should not be denied, so also the professionalism and independence of determining who is entitled to the status of having cooperated in uncovering a case cannot be denied. As the rights recognized by the United Nations Convention Against Transnational Organized Crime (UNCATOC) is governed by the Act No. 5 of 2009 of the United Nations Convention Against Transnational Organized Crime (UNCATOC). (UNCATOC), articles 26 paragraphs 2 and 3 and articles 12 paragraph 1 and 2. Lex Crimen Vol. IV / No. 1 / Jan-Mar / 2015 " If he is found legally and convincingly guilty, he cannot be exonerated of criminal charges, but his testimony can be utilized by judges as a factor in reducing the sentence criminal to be imposed." law, a person with the status of the Justice Collaborator, even though he has assisted law enforcement and returned assets resulting from criminal acts, will still serve a period of detention.

The treatment of criminal reporters and witnesses of perpetrators who collaborate in certain serious criminal cases is addressed in Indonesian Supreme Court Circular No. 4 of 2011 Corruption, terrorism, narcotics, money laundering, human trafficking, and other crimes criminal acts others that are organized, and are a serious threat to stabilization and security, peace and endanger the development and economy of the country.

Justice Collaborator involved in corruption should be protected from punishment is absolute, this is an effort to foster public participation in order to uncover the criminal acts as intended in the purpose and spirit contained in the As a result of the A favorable climate must be created, among other things, by providing legal protection and special treatment to anyone who knows, reports, or discovers something that can assist law enforcement in effectively disclosing and dealing with criminal acts under the Corruption Eradication Act and the Witness and Victim Protection Act.

Other regulations that also contributed were the Joint Regulations of the KPK, LPSK, POLICE, Witnesses. MENKUMHAM on protection for whistleblowers, whistleblower cooperating actors' witnesses and witnesses This Joint Regulation is a set of rules that apply to all aims to level the playing field in terms of viewpoints and perceptions, as well as make law enforcement responsibilities easier to carry out. specific and / or organized criminal acts to be used as a guide for law enforcers in coordinating and cooperating in the field of providing protection and the status of Justice Collaborator for reporters and co-operating witnesses of the perpetrators in the criminal case.

The existence of this joint regulation serves to minimize disharmony and synchronized conflicts to make collaboration and cooperation amongst law enforcement officials in the fight against serious and organized crime by enlisting the public's help in becoming reporters, reporters' witnesses, and/or actors' witnesses who collaborate in criminal cases. Using both physical and psychological techniques to create a sense of security, as well as rewarding citizens who are aware of the incidence or approaching occurrence.

Justice Collaborator is a person who is involved in an organized crime involving more than two people and therefore this crime is classified as difficult to uncover, and by that Sabab the person who becomes a Justice Collaborator is a very important individual because it can expose a crime and must be able to prove his information in order to dredge up the key criminals and additional suspects Thus the regulation of the Justice Collaborator needs to be considered philosophically more deeply, given the phenomenology of various regulations, the regulation up to the granting of approval will provide a reference as to who is right and the reasons or conditions for obtaining Justice Collaborator status. It is important to remember that the legislators are politicians, so what was conveyed in the debate session was the formation of the

regulatory provisions in terms of language and political nuances. However, the content of the material presented should be charged with philosophical thought and ontological, axiological and epistemological basis. In this case, it must also be able to sort out which ones can be included as philosophical basis and which ones are not relevant to be applied. The law or regulation regarding Justice Collaborator must reflect the ideas behind it, namely justice. Not just a product of political bargaining. If a regulation or law only produces and is the legitimacy of bargaining interests / politics, the law can be enacted and valid, but legally it actually does not exist if it does not contain the values of justice.

## **2 Research Methods**

Normative juridical research with a method of deductive to inductive, began in the method of approach law and by identifying the laws and other regulations governing the Indonesian law is based on the Constitution of the Republic of Indonesia What is the purpose of the establishment and the amendment to the Law of the Republic of Indonesia No. 13 year 2006 on the Protection of Witnesses and Victims, No. 31 of 2014 on the Amendment to the Law of the Republic of Indonesia No. 13 year 2006 on the Protection of Witnesses and Victims, No. 31 of 2014 on the Amendment to the Law mandate contained therein.

Further examine what regulations govern and enforce the law's mandate, and how it forms and how it is historically, so that it obtained legal materials as research using the implementation of methods of historical approach and concept approach.

## **3 Results and Discussion**

The state in principle wants the creation of prosperity for all people, thus stressed "That thereafter to establish an Indonesian government that protects all Indonesians and all Indonesian blood flows while also promoting public welfare, educates national life, and takes part in "the implementation of a world order based on liberty, eternal peace, and social justice," the Republic of Indonesia's 1945 Constitution said. If the Indonesian government fulfills the objective of the 1945 Constitution, it will be a success nation can optimally optimize its full potential, but various factors cause efforts to realize this noble goal to face many obstacles. Various research results show that one of the causes is the existence of corruption perpetrators as the main problems of the nation which must be immediately addressed.

Corruption in Indonesia is multifaceted and has a long history, dating back even further than the In 1970, the Republic of Indonesia became a unitary state. Bung Hatta in his capacity as an advisor to the President stated that corruption had "entrenched" in Indonesia. History also records that since the Dutch colonial era, corruption has been rampant, even the VOC of a Dutch state-owned BUMN that is tasked with exploiting Indonesia was forced to close down in 1979 because of corruption. The VOC was replaced by the colonial government of the Netherlands East Indies, when corrupt practices flourished. After the independence period, the old order Corruption thrived during the new order period, which lasted until the post-1998 reform period.

The development of criminal acts of corruption has been widespread in society, as a result the country suffered enormous losses, threatening the stability and security of the community because it can weaken law enforcement institutions and democratic values, ethical values, justice, and threaten the rule of law. Besides corruption also damaging the mental state administrators. That is, acts of corruption have shifted from corruption by need to corruption by greed (greed).

Therefore, criminal acts of Corruption has moved beyond the realm of ordinary crime and into the realm of extraordinary crime. Corruption is no longer only a regional issue of a country but has become a transnational phenomenon that requires international cooperation in prevention and eradication.

In order to uphold the The Indonesian government has established a strong policy framework based on the rule of law in the fight against corruption. Various policies contained in the legislation. Among them is Law No. 28/1999 concerning clean and KKN-free State Pennenggara, Law No. 31/1999, Junto Law No. 20/2001 concerning Eradication of Corruption. As well as Law Number 46 of 2009 concerning Corruption Criminal Court. To support measures to eradicate corruption in the reform era, the government also enacted Law No. 8 of 2010 on Money Laundering Prevention and Eradication, as well as Protection Act No. 13 of 2006 and Protection Act No. 31 of 2014 on Witnesses and Victims Protection.

Not only legislation policy, in terms of law enforcement in eradicating corruption, the government has formed a special institution Based on Law No. 30 of 2002, which regulates the Corruption Eradication Commission, as defined in Article 43 of Law No. 31 of 1999 and Law No. 20 of 2001, an independent Corruption Eradication Commission was established Commission needs to be established, with the task and authority to eradicate corruption. The Corruption Eradication Commission is a body charged with eradicating corruption trigger and empowerment of institutions that have been in the eradication of corruption, namely the police and the prosecutor (trigger mechanism). Widespread and systematic corruption is also a violation of the community's social and economic rights The mode of operation is also very sophisticated and often involves the authorities, both legislative, executive and judiciary. Therefore eradication is carried out with a strategy involving one of the perpetrators of corruption to participate in collaboration with law enforcement known as the Justice Collaborator.

Abdul Haris Semendawai stated that in the context of this disclosure, the existence of a Justice Collaborator became very important in order to dismantle the network of crime that had been neatly closed and very organized. Justice Collaborator is one of the efforts made to expose organized crime, such as mafia networks, including corruption that is usually carried out in congregation. The category of extraordinary crime clearly requires extraordinary measures, because legal protection is very necessary for Justice Collaborators against their activities that are against the law.

Provision of protection for witnesses who collaborated (Justice Collaborator) was first known in 1984 in Italy by the trial of Maxi Trial, with the recognition of Tomasso Buscetta. A Sicilian mafia member who cooperated with the Italian judiciary in dismantling the mafia network during the trial and succeeded in imprisoning 350 mafia members. And for his acknowledgment, Buscetta got a new identity and was relocated to a new area.

At present, protection for witnesses who collaborate has been practiced in various countries, for example in the United States giving authority to the authorities to provide security for witnesses who are willing to cooperate and are willing to give testimony on cases involving organized crime or other serious crimes by detention detention. Each member country is entitled to give physical and psychological security, according to The United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003), as passed into Law Number 7 of 2006, has Article 32. against witnesses and experts in disclosing corruption acts.

In addition, incentives for cooperating witnesses are governed by Article 37, which includes:

- a. Each participating country must consider reducing the An A offender who assists the investigation or prosecution in a major way is penalized. a crime of corruption in certain circumstances;
- b. Each participating country must evaluate the potential of providing Those who provides considerable cooperation in the investigation or prosecution of a criminal act of corruption in the government (Justice Collaborator) United States are immune from prosecution. conformity with the basic principles of national law. In Indonesia, the rights of the Justice Collaborator in the criminal justice process are protected and fulfilled, both in the pre-trial stage (pre-trial), the trial stage in the court (adjudication), and the post-trial stage (post-adjudication). Conducted by law enforcement agencies including the The Correctional Institutions, Corruption Eradication Commission, and Witness and Victim Protection Institutions were established in accordance with Act No. 13 of 2006 and Act No. 31 of 2014 Protection of Witnesses and Victims.

### **The 1945 Constitution in the Justice Collaborator**

The Republic of Indonesia's Constitution of 1945 is a written or basic legislation, constitutional government of the Republic of Indonesia. The Constitution can also be interpreted as a written basic law, as well as the most organized source of law in the world Indonesian state, which includes human rights, rights and obligations of citizens, nationals and Indonesian states as follows:

- a. Regulate norms in Indonesia.
- b. Giving birth to citizens who are able to build the country of Indonesia, so that they become a great and strong country.
- c. Regulate the process of legal governance in Indonesia.
- d. Making the Indonesian people prosperous, just and prosperous.
- e. Making Indonesia a harmonious country in the nation and state.
- f. Protect all Indonesians.
- g. Be the basis for regulating all Indonesian citizens.
- h. Guaranteed human rights as citizens.
- i. Become a unifying tool for the nation.
- j. Become a reference or guideline in making laws contained under the 1945 Constitution.

As the highest state regulation, the 1945 Constitution becomes a reference and parameter in the making of the regulations under it, including the The Witnesses and Victims Protection Act is a law that ensures the safety of witnesses and victims that regulates Justice Collaborators. Therefore, the existing legislation must not contradict the 1945 Constitution in terms of harmony, harmony and synchronization. The 1945 Constitution contains only basic provisions so that it can adjust to the changing times, with this basis, the setting of the status of Justice Collaborator which is not regulated completely, mandatory and must be carried out by reconstruction which is also based on the concept of Human Rights and the Principle of Utilization and justice.

As the mandate for the Preamble to the 1945 Constitution, which consists of four paragraphs, also has very important ideas, namely:

- a. First Thoughts, namely: "On the foundation of unity, the state through achieving social justice for all of Indonesia's citizens, safeguards the entire Indonesian country and all of Indonesia's bloodshed people." This is a possibility also be implicitly translated that the State protects all its citizens regardless of their status even though they are facing legal problems to remain independent in their rights to choose, accept or reject their position as

- JC without being encouraged by intimidation, pressure or promises of relief that have no legal certainty;
- b. Second Thoughts: "The state is the embodiment of social justice for all Indonesians." This is the social justice principle, which is founded on the understanding that all humans have the same rights and responsibilities in order to bring about social justice in people's lives. This mindset is an embryo for a sense of fairness and justice, especially in this Journal the author implements the recognition of certainty of rights for seekers of justice regarding with rights and obligations that must be carried out both by the recipient of the status of Justice Collaborator, and law enforcement;
  - c. Third Thought Principle, namely: "A country that is sovereign of the people, based on democratic discussion and representation." This demonstrates that the state structure established by the Basic Law must be based on the sovereignty of the people and on the rule of law on consultation / representation. This mindset explains deductively the process of birth of dogmatic law which started from social habits, then became the norm, and subsequently became positive law all based on a constitution carried out by the people's sovereignty agenda, this proves that all forms of regulation must have a legal basis complete so that it has certainty that gives rise to a sense of peace, so that the law becomes a sovereign product and can be accepted in the form of rights and obligations as well as accountability.
  - d. "The State is based on the Almighty God on the foundation of a just and civilized humanity," says the fourth thought. As a result, the Constitution must include content that requires the government and other state officials to retain noble humanitarian character and uphold the noble people's moral goals who are just without discriminatory forms.

#### **Human Rights in the Justice Collaborator**

The United Nations (UN) in 1946 formed the Commission of Human Rights (Human Rights Commission) and defined the notion of human rights known as the Universal Declaration of Human Rights, December 10, 1948 and signed by 48 States, among others, stating that every human being has human rights namely:

- a. Right to freedom and physical security.
- b. Right to get the same treatment in law.
- c. The right to be free to express thoughts and feelings.
- d. Right to freedom of opinion.

The Indonesian constitution, as drafted by the second session of BPUPKI and ratified the day after independence, August 18, 1945. The phrase in the 1945 Constitution that the Indonesian people recognize and uphold human rights in the form of a proclamation about human rights, "that actually independence is the right of all nation "as well as Indonesia's national development goals," educating the life of the nation, promoting public welfare, "protecting the whole nation", and "taking part in carrying out world order" which means the equal rights of each individual Indonesian nation. the statement of The sounding of the human rights is likewise consistent with the ringing of the five precepts in Pancasila which are also listed in the Preamble to the 1945 Constitution the fourth paragraph.

Likewise in the articles of the 1945 Constitution contained in Human Rights that can be drawn position in the implementation of the determination of the status of Justice Collaborator include:

- Article 28 I Paragraph (1) The right of every person to live, the The right not to be tortured, the right to religious freedom, the right not to be enslaved, and the right not to be enslaved are all rights that people have tortured are all fundamental human rights prosecuted

under retroactive laws; the right to be free from discrimination; and the protection of culture and the environment traditional community rights; all protection of the state is entitled and obliged to participate in national defense and security efforts;

Paragraph (2) Contains the statement that everyone is free from discriminatory treatment;

Paragraph (3) HAK respected the cultural identity and traditional society in in keeping with the times;

paragraph (4) The safeguarding and responsibility for the implementation of human rights is the government;

Paragraph (5) The implementation of human rights in Indonesia is regulated in more detail by laws and regulations.

- Article 28 J

Article 28 J consists of 2 paragraphs, which contain the obligation of each person to respect the rights of others. In addition, this article also states that in social life with the guarantee of human rights protection, certain restrictions are given to keep it in accordance with the norms and maintain public order.

The examiner can choose to admit or not to the investigator / authorized, but cannot be punished for refusing to provide information, coercion including torture. Thus it can be concluded that the right of a suspect or defendant to remain silent and not blame himself is a human right that must be respected and fulfilled, except when information which incriminates him is voluntarily disclosed without pressure.

The actions of the state or government must not go beyond or violate human rights, may not deny legal protection to a person or group of people, must not discriminate against people for reasons that are not legal, and all government activities or actions must be based on applicable legal rules.

### **Justice Collaborator in Indonesia and Others Country**

The phrase Justice Collaborator is used differently in different nations; for example, some countries use the terms Pentiti, Participant Whistleblowers, Justice Collaborators, or Cooperative Whistleblowers (Italy). Indonesian officials claim that Supreme Court Circular No. 4 of 2011 on Whistleblower Treatment and In Some Criminal Cases, Justice Collaborators, the What's the difference between a whistleblower and a Justice Collaborator. Reporting witnesses are called Whistleblowers while witnesses who collaborate are called Justice Collaborators. In Indonesian criminal law, the phrase "whistleblowers" is a slang term. In Indonesia, however, there is a word called "crown witness," which refers to when One of the criminals is summoned as a vital witness in order to expose the other culprits in exchange for a reduced danger of penalty.

The concept of Protection of Cooperating Persons Countries in continental Europe such as the Netherlands, France, and Italy, it's been around for a long time, whereas the Whistleblowers notion is largely used in Anglo-Saxon countries, particularly America and commonwealth countries (Commonwealth countries, former British colony). Nevertheless the concept of Whistleblowers and the concept of Protection of Cooperating Person are two very different things. The whistleblower of the Whistleblowers concept was not convicted at all, while the whistleblower of the concept of Protection of Cooperating Persons could still be convicted but received relief. The concept of Protection of Cooperating Person is more concentrated on the perpetrators who cooperate with law enforcement (Justice Collaborator) in uncovering the complexity of the case.

The word Justice Collaborator is also the same as the witnesses of the perpetrators, as defined in Act No. 13 of 2006, as amended by Act No. 31 of 2014, concerning Witnesses and



Victims Protection. The witnesses of the perpetrators are suspects, defendants, or convicted criminals who assist law enforcement in uncovering a criminal act in the same case, according to Article 1 paragraph (2).

Whistleblower and Justice Collaborator are two terms used by Romli Atmasasmita. A whistleblower is a person who, in most cases as a victim, testifies to investigators about the criminal behavior that he is aware of, has heard about, or has even participated in experienced. With it, he was assured of (physical) security under the police's supervision. This is accomplished by assuming a different identity, hiding it in a certain area, and keeping it under police intelligence observation. The Whistleblower's mission and existence is to assist the investigating team in fully disclosing a case to the intellectual father and the crime organization's leader.

While the Justice Collaborator is on the job, is every suspect involved in a criminal organization and has committed a crime both on his own initiative and at the request of the legal apparatus to cooperate with law enforcement agencies to find evidence and evidence so that investigations and prosecutions can be carried out effectively. Protection of Whistleblowers is different from Justice Collaborator. Legal protection for Whistleblowers is limited to physical protection while protection for Justice Collaborator is not limited to physical but also "relief that can be offered."

The implementation of Witness and victim protection is inextricably linked to a number of concerns, including law enforcement for witness and victim protection, when witness and victim protection is carried out, types of witness and victim protection, and witness and victim protection in the criminal justice system.

#### **Between the rights of award and the risk of a Justice Collaborator**

Because it helps law enforcement officers know, discover reveal criminal deeds, including the main perpetrators of a crime, justice collaborators or witnesses face the risk of being threatened or becoming victims of violence.

Instructions establishing whether or not someone is a Collaborating Actor (Justice Collaborator) are regulated in the Supreme Court Circular Letter The Harifin A. Tumpa, Chief Justice of the Supreme Court, signed the letter No. 4 of 2011 written to the Chairpersons of the High Courts and Heads of District Courts throughout Indonesia on the 10th of August 2011. The following are the guidelines:

- a. The individual in question is a perpetrator of certain criminal acts as defined in The Supreme Court Circular Letter No. 4 of 2011 acknowledges that he committed a crime, that he was not the major perpetrator, and that he is willing to testify as a witness in the judicial process;
- b. According to the Public Prosecutor's claim, the individual in issue has provided critical information and evidence that would enable the investigator and/or public prosecutor to successfully disclose the crime, reveal other individuals with a greater role, and/or restore assets / proceeds of crime.

Witnesses and victims in the criminal justice system must be granted protection based on the principle of equality before the law, which is one of the features of the rule of law that refers to five aspects, their rules: respect for human dignity, sense of security, justice, non-discriminatory, and certainty law with the aim of providing a sense of security for witnesses and victims in providing information on every criminal justice process.

Considering the regulation governing the Justice Collaborator in particular about the protection of security has been adequate, which with various facilities from the placement of witnesses in certain places, to restrict the examination directly with the reported and security

assurance and escort provided by the country can be categorized, as well as the appreciation of the willingness to uncover the perpetrator in the case has been very profitable for the recipient of Justice status Collaborator, it can be seen from the granting of claims, waivers and various facilities during the investigation and during the proceedings.

This is what can be disused by the check, suspect in the engineer or defendant in a certain case to do the manouever for the importance of being not to get a severe punishment, then by stating he will cooperative cooperation with investigators during the process and said willing to give a description of the information to give significant information or declare himself have a description of who is the actual actor or principal, it is strongly considered to have status as a witness in cooperation or known as Justice Collaborator.

With such phenomena, researchers try to digest regulations and legal standing related to regulate, implement and how the Decideni ratio is used to establish the status of Justice Collaborator. As follows:

The following Joint Regulation was issued on December 14, 2011 by the Minister of Justice and Human Rights, the Attorney General, the Chief of Police, the Corruption Eradication Commission, and the Chair of the Witness and Victim Protection Agency: m.hh-11.hm.03.02.th.2011, Number: per-045 / a / ja / 12/2011, Number: 1 of 2011, Number: kepb-02 / 01-55 / 12/2011, Number: 4 of 2011 concerning Protection for Report The following are the standards for cooperating actors' protection as witnesses, as outlined in the Joint Regulation:

- a. It is a major and/or organized crime that will be revealed;
- b. To uncover a major and/or organized crime, provide important, relevant, and credible information;
- c. In the crime he will expose, he is not the major perpetrator;
- d. Willingness to hand over a certain amount of assets as a result of the applicable crime, as declared in a written statement;
- e. If the crime is exposed according to the actual scenario, there are real threats or concerns of threats, Pressure was applied to the witnesses of the crime, both physically and psychologically participating criminals or their families.

Protection of Acting Witnesses from LPSK under the Witnesses and Victims Protection Act No. 13 of 2006, in combination with Act No. 31 of 2014 is provided with the following conditions:

**Article 28 paragraph (2)**

The criminal act that will be revealed is a in some situations, a criminal act accordingly with the LPSK decision as referred to in

**Article 5 paragraph (2):**

- a. The significance of the Acting Witness's information in uncovering a criminal offense;
- b. He was not identified as the primary perpetrator of the crime;
- c. Willingness to repay assets obtained and to confess to criminal actions in a written statement;
- d. If the crime is exposed according to the facts, there are real threats or thoughts of threats, The Acting Witness or his family may be subjected to physical or psychological pressure.

While the rights of Justice Collaborator are scattered in several rules of abuse as follows:

- a. Law No. 7 of 2006 codified the United Nations Convention Against Corruption, which was adopted in 2003. (United Nations Anti-Corruption Convention, 2003). The following is taken from Article 32:
  - 1) Every state of the participant shall take appropriate measures in accordance with the country's legal framework, and provide effective protection against possible reprisal or

threats/intimidation of witnesses and expert witnesses who testify on the criminal offense required by this Convention, to the extent necessary for the safety of their families and those close to them;

- 2) Without (reducing or deleting) the defendant's rights, including the right to a fair trial, the acts listed in paragraph (1) of this article may include:
  - a. To determine physical protection mechanisms for such people, such as relocating them if required and possible, and allowing (unexposure) or restricting revelation of information about their identity and existence when appropriate;
  - b. Provide the proving law that enables witnesses and members to bear testimony by ensuring the safety of the people, such as allowing the sacitness of the field to be provided with adequate communication, video or means.
    - 1) States countries shall consider the approval of Arrangements have been made with other countries for the relocation of the people mentioned in paragraph (1)
    - 2) Witness and victim protection law No. 13 of 2006 junto law No. 31 of 2014 governs the right of Justice Collaborator, in some chapters, namely:
  - c. Article 10
    - 1) Witnesses, victims, witnesses, and/or reporters cannot be penalized, both criminally and civilly, for the testimony and/or report that will, be, or have been given, unless it was given in bad faith;
    - 2) A lawsuit filed against witnesses, victims, perpetrator witnesses, and/or the reporter for testimony and/or reports that will, be, or have been given will be postponed until the case in which he reports or bears the testimony has been disconnected by the court and has received permanent legal force.
  - d. Article 10 A
    - 1) Witnesses of the perpetrator may be given extra weight throughout the examination and assessment of the testimony;
    - 2) Special treatment as intended in paragraph (1) shall be:
      - The separation of the detention place or the criminal site between the perpetrator's witnesses with suspects, defendants, and/or convicts who have come forward with information about their crimes;
      - Separation of the witness file from the defendant during the a criminal investigation and/or prosecution of alleged criminal activities, and/or
      - Give testimony in front of the court without having to interact directly with the offender who revealed his or her illicit activities;
    - 3) Appreciation for the The following is the type of testimony that will be given in accordance with paragraph (1):
      - Relief of criminal rationing, or
      - Inmates' rights to parole, extra remission, and other privileges under the law law's requirements for inmates who commit crimes.
  - e. M. HH-11. hm. 03.02. Th. 2011, Number: Per-045/A/JA/12/2011, Number 1 year 2011, Number: KEPB-02/01-55/12/2011, Number: 4 year 2011, Number: Per-045/A/JA/12/2011, Number 1 year 2011, Number: Per-045/A/JA/12/2011, Number 1 year 2011, Number: Per-045/A/JA/12/2011, Number 1 year 2011, Number: Per-045/A/JA Cooperating witnesses having the right to receive:
    - 1) Physical and psychic protection;
    - 2) Legal protection;
    - 3) Special handling.
    - 4) Special handling can be:

- The separation of the detention place, confinement or imprisonment of the suspect, the defendant and/or the narapiment of the crimes disclosed in the case of witnesses of the perpetrator who cooperated or underwent a criminal body;
- The filing of a matter as may be done separately with suspects and/or other defendants in criminal matters which are dialaporkan or disclosed;
- The postponement of the prosecution;
- The suspension of legal action (investigation and prosecution) that may be brought as a result of the information of the report and/or the testimonies it gives; and/or
- Give testimony in front of a judge without any preparation exhibiting its face or revealing its identify;
- Awards.

The form of appreciation that can be given to witnesses who work together can be:

- a. Waivers of punishment claims, including demanding trial penalties; and/or.
- b. When witnesses who work together are imprisoned, they are entitled to further remission and other benefits in accordance with current rules and regulations.

#### **Mechanisms for granting the rights of Justice Collaborator**

The rights of the Justice Collaborator can be grouped in several forms. First physical, psychic and legal protection; Second, special handling; Third, award (reward).

Abdul Haris Samendawai Raises the mechanisms of granting rights-Justice Collaborator as follows:

- a. Physical and Psychic protection mechanisms:  
The process of providing facilitation Following the Attorney General's or KPK's designation of a Justice Collaborator,, the suggested protection (may be) developed by LPSK on its own initiative from Justice Collaborator or other law enforcement Imstansi; Suspects/defendants are not allowed to apply for protection directly to LPSK if it has not been established as Justice Collaborator;  
LPSK conducts the examination on the fulfilment of all the later requirements, the obligatory, Provides physical and psychological protection against Justice Collaborator, whether alone or with the other side.
- b. Special treatment mechanism:  
On the protection of the placement of prisoners ruan separate The LPSK coordinates with the other participants in the case, he said parties who conduct institutions that have authority in the settlement of detention (Ministry of Law and Human rights);  
Against the delay of legal action taken as a result of the facts, reports, and/or testimony given not required the arrangement of special mechanisms to obtain it, because it has been governed in the law of liability for law enforcement officials to do good;  
It should be automatically done by the law enforcement authorities, except when there is a condition where it cannot be done
- c. The mechanism of awarding  
Contracts between the prosecutor's office and the Justice Collaborator's office govern the award process.  
The Justice Collaborator may present the application alone or through the case's law enforcement officers;

The Attorney General and the KPK (for corruption cases) can receive applications directly, and The Attorney General or the Chairman of the KPK can offer recommendations to the LPSK.

In addition to the grant of mercy and remissiveness to Justice Collaborators, the function It is the responsibility of the Attorney General or the Chairman of the KPK to consider the The President and the Minister of Justice and Human Rights.

Lilik Mulyadi said that the practice of providing Justice Collaborator with legal protection has occurred in a number of nations, including;

- a. USA,  
Legal protection regulations against whistleblowers and Justice collaborator Adiatu in the Whistleblowers Act 1989;
- b. Netherlands,  
The practices of protection against Justice Collaborator in the Dutch state use a witness Agreements mechanism;
- c. German,  
The witness protection practice in German state was initially not performed at the same time Since 1984, a new system of witness protection has been in place in Germany, overseen by the Inspectorate of the German Police General.

From the positive laws that decompose above, can be concluded the purpose of the working witness, either in the form of Wistle blower and is a witness of the Crown and witnesses who cooperate with investigators on certain matters that have been nailed the separation of the file or known as splithsing can or allows obtaining the status of Justice Collaborator. But the important nature of the testimony must not be a weakness of law enforcement in the barening position between the information provided is not necessarily true factual or just a lie to achieve the goal can relieve punishment.

Witnesses are an important factor in the matter, especially in terms of finding the light of a delic, so that it is not justified in conducting inspections with the pressure however that can cause suspects or witnesses to explain the different things that are considered not as free mind statements.

#### **4 Conclusion**

This scientific journal is expected to contribute mindset to the arrangement of Justice Collaborator which fulfills the principle of legal and justice certainty and uphold the human rights values, the author argues the 3rd evidence of the legal philosophy of Meuwissen, that "philosophy of law" as the reasoning of theoretical law which ranks the most abstract analysis and occupies the highest position in the layers of science can be implemented in the development of practical law i.e. law enforcement practice with regards to the resolution of legal issues with the purpose and the nature of the process of revealing evil by using the way of witnesses who cooperate/Justice Collaborator in order not to be misconstrued as a legal commodity for the sake of alleviating punishment and instead to comply with legal politics that is not in accordance with lofty ideals in combating corruption crimes. The determination of the Justice's Situation Collaborator must adhere to the guidelines. Constitution UUD RI Year 1945 and the concept of upholding human rights.

- a. The determination of the status of Justice Collaborator should balance between awards and achievements;
- b. Required law enforcement who have a high dedication to the Office, a comprehensive understanding of, especially in the implementation of the appointment of a Justice Collaborator;

- c. The norm of determination of hukumJustice Collaborator Perelu is equipped with an achievement that is clear in accordance with the principle of legal certainty, benefit and justice for all Indonesian people

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